IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9056 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

AJIT @ BAKUL @ BAKLO KATABHAI @ DILIPBHAI PARMAR

Versus

DISTRICT MAGISTRATE

---

Appearance:

Mr.Pravin Gondalia for MR YOGESH S LAKHANI
for Petitioner
Mr.Uday R.Bhatt AGP for respondent no.2
Rule served for Respondent No. 1, 3

---

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 14/11/2000

ORAL JUDGEMENT

#. The petitioner herein, by way of this petition under article 226 of the Constitution has challenged the detention order passed against him under the Gujarat

Prevention of Anti-Social Activities Act 1985 (PASA for short) on 7.7.2000 by which the petitioner is detained from 7.7.2000.

#. The facts reveals that the District Magistrate, Bhavnagar vide his order dated 7.7.2000 reached to subjective satisfaction that the petitioner was a dangerous person within the meaning of section 2(c) of PASA. The authority relied upon three crimes registered against the petitioner. Crime Register No. 312 of 19900 was registered in A Division Police Station, Bhavnagar on 13.6.1998 against the petitioner under sections 392 and 34 of the Indian Penal Code. The petitioner came to be arrested on 15.6.1998 and was released on bail on 15.6.1988. Second Crime was registered against the petitioner before the A Division Police Station, Bhavnagar vide CR No. 515 of 1989 on 19.10.1989 under section 354, 506(2) and 114 of the Indian Penal Code. The petitioner was arrested on 20.10.1989 and was released on bail on 21.10.1989. The third crime came to be registered against the petitioner before the C Division Police station, Bhavnagar vide Cr.No.91 of 2000 on 20.4.2000 under sections 363,366,323 and 506(2) of the Indian Penal Code. The petitioner was arrested on 24.4.2000 and was released on bail on 16.5.2000. Having taken into consideration the facts and materials of these three crimes registered, the District Magistrate, Bhavnagar , i.e. the concerned detaining authority came to the conclusion that the petitioner was indulging in antisocial activity and in para 2 of the order the detaining authority has narrated the incidents in which the petitioner was involved. The detaining authority has also relied upon the statements of 3 witnesses who gave their statements on assurance of anonymity of address and names of the witnesses. These witnesses have narrated the incidents of 9.5.2000 and the allegations are that the petitioner has indulged in extracting money by force from the citizens and out of fear none came forward to file a complaint or give statements. Further according to the detaining authority, he has verified the above said statements and the facts were found to be true as narrated by the witnesses in the above said statements. The detaining authority therefore, reached to a conclusion that the petitioner was an obstruction in maintenance of public order. The detaining authority has also taken into consideration that no action can be taken against him under section 110 of Cr.P.C. The detaining authority also considered that the procedure for cancellation of bail under section 437(5) of Cr.P.C. would not be an effective remedy, because the same was likely to take long time and the illegal activities of

the petitioner were required to be prevented forthwith. Therefore, after satisfying subjectively, the detaining authority passed and order of detention of the petitioner as aforesaid.

#. Learned advocate Mr. Gondalia for the petitioner and learned AGP Mr. Uday Bhatt on behalf of the respondents were heard.

#. The detention order came to be challenged on various grounds. One of the grounds is that the subjective satisfaction reached by detaining authority is vitiated by a fact that the detaining authority satisfied itself as to the genuineness of the statements of the witnesses whose names and address have been kept secret only on simple verification of statements which is a wrong exercise under section 9(2) of PASA. The detaining authority has filed his affidavit which is also taken on record.

#. On scrutiny of the grounds it appears that this matter can be decided on the ground alone that whether the detaining authority correctly exercised the powers under section 9(2) of PASA and reached to correct subjective satisfaction. The case is covered directly by a decision of division bench of this court in the matter of Koli Ashwin vs. State of Gujarat in Special Cri.Application No.1812 of 1993 referred to in a decision of this court in the matter of Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & ors. as reported in 1996(1)GLH 300 . Attention of the Court was invited to the copies of the statement of witnesses who gave statement on assurance of secrecy. It is found that the statements of the witnesses whose identity is not disclosed are before the Police Inspector C Division Police Station, Bhavnagar and only endorsement below " verified the contents" the detaining authority has put seal and signature. In the detention order, the detaining authority has mentioned that the witnesses were before him and he has personally verified the contents and a thorough study of the statements were made by him. In the similar circumstances in the above mentioned decision of Jakrbhai Rahimbhai Nagori (Supra) this court has observed that the claim of privilege by the detaining authority on the basis of such endorsement was not genuine one. The case of Koli Ashwin vs. State of Gujarat was referred and the following observations were relied on.

" However, as is well established, for exercising
the power under Section 9(2) what is required for

> a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy. S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material."

#. Learned AGP has vehemently argued that the detaining authority has filed his affidavit in which he has made crystal clear that after scrutiny of the statement and after varying the genuineness and correctness, the powers under section 9(2) were exercised. The contention of the learned AGP simply cannot be accepted on the ground that the Division Bench of this Court rules that to claim privilege under section 9(2) the detaining authority is required to point out either the grounds or in the contemporaneous record that he had sufficient materials before him to come to that subjective satisfaction. In that case also the statements recorded by Dy.S.P. the detaining authority endorsed the word "verified" while in this case the detaining authority endorsed " verified the contents" but however, the contemporaneous record or the material by which privilege under section 9(2) of PASA is claimed, is not coming forth. Therefore, the detention order is required to be set aside on this ground alone and hence the other grounds advanced on behalf of the petitioner are not dealt with.

#. In this view of the matter the detention order dated 7.7.2000 of the detaining authority i.e. the District Magistrate, Bhavnagar is set aside. The petitioner Ajit @ Bakul @ Baklo Katabhai @ Dilipbhai Parmar is ordered to be set at liberty forthwith if he is not required to be detained in custody for any other purpose. Rule is made absolute. No order as to costs.

(J.R.Vora.J)

govindan